

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ANDREA JOHNSON,

9 Plaintiff,

v.

10 MIKE DEWITT, et al.,

11 Defendants.

CASE NO. C17-5963BHS

ORDER GRANTING PLAINTIFF'S
MOTION FOR AN EXTENSION
OF TIME AND DEFENDANTS'
MOTION TO DISMISS

12
13 This matter comes before the Court on Defendants Mike DeWitt ("DeWitt") and
14 Taylor Law Group's (collectively "Defendants") motion to dismiss (Dkt. 72) and Plaintiff
15 Andrea Johnson's ("Johnson") emergency motion for extension of time (Dkt. 74). The
16 Court has considered the pleadings filed in support of and in opposition to the motions
17 and hereby rules as follows:

18 **I. PROCEDURAL HISTORY**

19 On December 12, 2017, Johnson filed a complaint against Defendants asserting
20 numerous causes of action. Dkt. 4.

21 On March 15, 2018, Defendants moved to dismiss. Dkt. 22. On April 30, 2018,
22 the Court granted the motion and granted Johnson leave to amend. Dkt. 72.

1 On May 18, 2018, Johnson filed an amended complaint. Dkts. 70, 71. On June
2 11, 2018, Defendants moved to dismiss. Dkt. 72. On July 6, 2018, Johnson responded,
3 filed an emergency motion for an extension of time to respond, and supplemented her
4 motions. Dkts. 73–75.¹ On July 11, 2018, Defendants responded. Dkt. 76. On July 23,
5 2018, Johnson filed a statement regarding her filings. Dkt. 77. On July 30, 2018,
6 Johnson supplemented her response. Dkt. 78.

7 II. FACTUAL BACKGROUND

8 This case arises out of a state court commissioner appointing DeWitt as a litigation
9 guardian ad litem for Johnson. Johnson appears to claim that Dewitt’s appointment
10 resulted in malpractice or breach of a fiduciary duty.

11 III. DISCUSSION

12 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
13 Procedure may be based on either the lack of a cognizable legal theory or the absence of
14 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*,
15 901 F.2d 696, 699 (9th Cir. 1990).

16 Under Washington law, quasi-judicial immunity “attaches to persons or entities
17 who perform functions that are so comparable to those performed by judges that it is felt
18 they should share the judge’s absolute immunity while carrying out those functions.”
19 *Savage v. State*, 127 Wn.2d 434, 441 (1995); *Lutheran Day Care v. Snohomish County*,
20 119 Wn.2d 91, 99 (1992). When quasi-judicial immunity applies, it is an absolute bar to

21
22 ¹ The Court grants the motion for an extension and considered Johnson’s responses.

1 civil liability and necessarily leaves wronged claimants without a remedy. *West v.*
2 *Osborne*, 108 Wn. App. 764, 773 (2001) (citing *Lutheran Day Care*, 119 Wn.2d at 99;
3 *Babcock v. State*, 116 Wn.2d 596, 606–08 (1991)). The Washington Supreme Court has
4 applied quasi-judicial immunity to a guardian ad litem when the guardian ad litem was
5 acting “as an arm of the court.” *Barr v. Day*, 124 Wn.2d 318, 332 (1994). Washington
6 courts have also applied quasi-judicial immunity to a guardian ad litem who was acting
7 within the scope of his statutory duties. *Osborne*, 108 Wn. App at 773–74.

8 In this case, Defendants argue that DeWitt is entitled to quasi-judicial immunity
9 for his services as Johnson’s guardian ad litem. Dkt. 72 at 6–8. The Court agrees
10 because it has previously granted DeWitt this immunity in Johnson’s companion case.
11 *See Johnson v. Barnes*, C17-5963BHS, Dkt. 56 (W.D. Wash. June 14, 2018). Moreover,
12 Johnson fails to articulate any allegation that DeWitt or his employer, Taylor Law Group,
13 acted beyond the scope of DeWitt’s court-appointed duties. Therefore, Defendants have
14 shown that they are immune from Johnson’s claims and that Johnson’s complaint should
15 be dismissed.

16 The next issue is the appropriate remedy. Dismissal with prejudice is proper only
17 if it is absolutely clear that the deficiencies of the complaint could not be cured by
18 amendment. *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980). Defendants
19 have shown that any amendment would be futile, and Johnson has previously been
20 granted leave to amend. Therefore, the Court agrees with Defendants that Johnson’s
21 claims should be dismissed with prejudice.
22

1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** that Defendants' motion to dismiss (Dkt. 72)
3 and Johnson's emergency motion for extension of time (Dkt. 74) are **GRANTED** and
4 Johnson's claims are **DISMISSED with prejudice**. The Clerk shall enter a
5 **JUDGMENT** and close the case.

6 Dated this 5th day of September, 2018.

7 

8 BENJAMIN H. SETTLE
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22